

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case Nos.: 13-O-17122-PEM |
| |) | (14-O-00513; 14-O-00973) |
| HARRY WILLARD ZIMMERMAN, |) | |
| |) | DECISION AND ORDER OF |
| Member No. 166422, |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |
| <u>A Member of the State Bar.</u> |) | |

In this matter, respondent Harry Willard Zimmerman was charged with eleven counts of misconduct stemming from three matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney’s default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 1, 1993, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 22, 2014, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar received a return receipt card from the U.S. Postal Service.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him and leaving a message at his membership records telephone number, sending an email to respondent at his membership records email address, and mailing a courtesy copy of the NDC to respondent at his membership records address.³

Respondent failed to file a response to the NDC. On October 2, 2014, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule

³ The declaration of Deputy Trial Counsel Elizabeth Stine states that on "March 18, 2014" the State Bar emailed respondent and left him a telephone message, advising that the State Bar intended to file a default motion. As the NDC was not filed until August 2014, the court presumes that the references to "March 18, 2014" were typographical errors and should instead have stated "September 18, 2014."

5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on October 21, 2014. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On January 28, 2015, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no other disciplinary matters pending; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 24, 2015.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on September 15, 2000, in case no. S089836, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for three years. In this matter, respondent stipulated to two counts of misconduct, including improperly withdrawing from a client matter and failing to obey all laws.⁴

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set

⁴ Respondent's failure to obey all laws related to his 1997 conviction for driving under the influence and leaving the scene of an accident.

forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case No. 13-O-17122 – The Client Trust Account Matter

Count One – respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by issuing ten checks drawn upon his client trust account when he knew or was grossly negligent in not knowing that there were insufficient funds to pay them.

Count Two – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling) by using his client trust account to maintain personal funds and pay personal expenses.

Case No. 14-O-00513 – The Sandoval Matter

Count Three – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform) by failing to appear at two pretrial hearings, resulting in the issuance of a bench warrant against his client.

Count Four – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by effectively withdrawing from representing a client without notice to the client.

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate), by failing to keep his client informed of significant developments.

Count Six – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to account) by failing to provide his client with an accounting.

Case No. 14-O-00973 – The Prince Matter

Count Seven⁵ – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform) by failing to appear at a pretrial hearing, resulting in the issuance of a bench warrant against his client.

Count Eight – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by effectively withdrawing from representing a client without notice to the client.

Count Nine – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate), by failing to keep his client informed of significant developments.

Count Ten – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to account) by failing to provide his client with an accounting.

Case Nos. 13-O-17122 & 14-O-00973– The Client Trust Account Matter

Count Eleven – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation), by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly served him with the NDC and made various efforts

⁵ The NDC identifies Count Seven as part of case no. 14-O-00513; however, this appears to be a typographical error.

to locate respondent, including mailing a courtesy copy of the NDC to respondent at his membership records address, calling him and leaving a message at his membership records telephone number, and sending an email to respondent at his membership records email address;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Harry Willard Zimmerman be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Harry Willard Zimmerman, State Bar number 166422, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: March _____, 2015

Pat McElroy
Judge of the State Bar Court